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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/714,705

11/17/2003

Michael David Bodnar

T380.12-0002

5403

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7590

09/01/2004

KINNEY & LANGE, P.A.  
THE KINNEY & LANGE BUILDING  
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MINNEAPOLIS, MN 55415-1002

EXAMINER

CYGAN, MICHAEL T

ART UNIT

PAPER NUMBER

2855

DATE MAILED: 09/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/714,705

Applicant(s)

BODNAR, MICHAEL DAVID

Examiner

Michael Cygan

Art Unit

2855

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11/17/2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/17/2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-3, 7, 8, 11, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Shagott (US 5,593,470). Shagott discloses the claimed invention, an air quality test kit [10] comprising a ventilation system having a blower fan [50,52] producing a uniform pressure over a filter unit, which comprises a particulate filter [48] having a predetermined area and supported adjacently against a bag filter [36] by a support gasket/backing pad [46] which has a central opening and a mounting assembly wherein the filter and pad are secured to a wall covering an entrance to a front of the interior; see entire disclosure, especially column 4 and Figure 3. The particles remain trapped in the test filter for analysis using a pressure gauge to determine the amount of particles in the filter; see column 7, lines 23-37.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shagott (US 5,593,470) in view of Basch (US 5,717,147). Shagott teaches the claimed invention except for a container which protect the test filter when not in use. Basch teaches the use of a container in an air testing kit; see column 7, lines 49-52. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a container as taught by Basch in the invention taught by Shagott to contain the filters, since this would reduce errors due to stray particle exposure.
3. Claims 6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shagott (US 5,593,470) in view of Cooper (US 5,205,155). Shagott teaches the claimed invention except for the use of 50 mm mixed cellulose ester filters. Cooper teaches the use of 37 mm mixed cellulose ester filters for monitoring airborne particulates such as asbestos; see column 1. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use mixed cellulose ester filters as taught by Cooper in the invention taught by

Shagott to act as the test filters, since Cooper teaches such a use for monitoring asbestos which is a known health hazard. With respect to the use of 50 mm filters, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use 50 mm filters, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 5-8 of U.S. Patent No. 6,672,134 B2 in view of Shagott (US 5,593,470). The '134 patent claims essentially the same invention as that of the instant invention except for the support located within the filter housing, the filter

being 50 mm, and the cardboard support being either porous or nonporous.

Shagott disclosed a support located within the filter housing (a particulate filter [48] having a predetermined area and supported adjacently against a bag filter [36] by a support gasket/backing pad [46] which has a central opening and a mounting assembly wherein the filter and pad are secured to a wall covering an entrance to a front of the interior; see entire disclosure, especially column 4 and Figure 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a support located within the housing in the invention claimed in the '134 patent to hold the filter, since the filter was located within the housing and locating such a support with the filter would increase the supportive properties of the support.

With respect to the use of 50 mm filters, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use 50 mm filters, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to the porosity of the cardboard, the '134 patent claims a cardboard support which is inherently either porous or nonporous.


**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Givargis (US 6,613,130) and Ohno (US 6,540,805) disclose multi-filter systems.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Cygan whose telephone number is (571) 272-2175. The examiner can normally be reached on 8:30-6 M-Th, alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be reached on 571-272-2180. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**MICHAEL CYGAN, PH.D.**  
**PRIMARY EXAMINER**